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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

NSIGHT, INC.,

Plaintiff

v.

PEOPLESOFT, INC.,

Defendant.

Case No.: 04-3836 MMC

STATUS REPORT OF ORACLE USA, INC.  
 REGARDING EFFORTS TO CONDUCT MEET  
 AND CONFER SESSION; REQUEST FOR  
 TELEPHONIC DISCOVERY CONFERENCE

DISCOVERY MATTER

BEFORE: MAGISTRATE JUDGE  
 MARIA-ELENA JAMES

Oracle USA, Inc., as successor to defendant PeopleSoft, Inc., submits this status report pursuant to Magistrate Judge Maria-Elena James' order dated January 4, 2006 (the "Order"). The Order followed Judge Chesney's referral of the parties' pending discovery motions, as well as all other discovery disputes. Oracle USA apologizes for not submitting a joint meet and confer letter as contemplated by the Order, but under the circumstances as described below that is impossible and further guidance from the Court is needed. Oracle USA accordingly requests a telephonic discovery conference.

1 The Order required the parties to meet and confer *in person* regarding the pending  
2 discovery disputes. Upon receipt of the Order on January 4, 2006, Oracle USA's counsel promptly  
3 emailed Plaintiff's counsel in an attempt to schedule the required meet and confer session. When  
4 Plaintiff's counsel failed to respond, Oracle repeated its request on January 5, 2006. This request  
5 generated a series of vitriolic email messages from Plaintiff's counsel, in which he refused to engage in  
6 the ordered conference. Nothing in the polite requests from Oracle USA's counsel justified Plaintiff's  
7 counsel's invective, which continued despite requests that he act in a professional manner. A true and  
8 correct copy of the e-mail chain containing these messages is attached as Exhibit 1 to the Declaration of  
9 James A. Hughes ("Hughes Decl.").

10 On January 9, Plaintiff's counsel sent an email stating that he wished to conduct the meet  
11 and confer on January 27 at the federal courthouse, when the parties are scheduled to participate in a  
12 settlement conference before Magistrate Judge Chen. This date is more than three weeks after the Order  
13 was issued. Oracle USA replied that January 27 was too far in the future, given the schedule of the case,  
14 in which expert discovery must be completed by March 3, 2006, dispositive motions must be filed by  
15 March 17, 2006; and trial is set for June 12, 2006. (To date Plaintiff has refused to respond to *any*  
16 discovery and refused to produce its President for a properly noticed deposition, all of which are topics  
17 of Oracle USA's pending discovery motion). Thinking that the real concern of Plaintiff's counsel might  
18 be that the Order required an in-person meeting, which was inconvenient for him because he practices in  
19 Los Angeles and St. Louis, Oracle USA's counsel emailed him again, offering to seek permission from  
20 the Court to conduct the meet and confer session by telephone, and requesting his availability for such a  
21 telephone conference. This resulted in another invective-filled message from Plaintiff's counsel  
22 refusing even to discuss dates and times for a telephonic meet and confer session. Hughes Decl.  
23 Exhibit 2.

24 This abusive, intransigent approach to discovery obligations is not isolated. Rather,  
25 Oracle USA's pending discovery motion demonstrates that this conduct is consistent with the manner in  
26 which Plaintiff's counsel has handled the case from the beginning. Every lawyer who has dealt with  
27 Plaintiff's counsel has been accused of being impolite, acting solely to generate attorneys' fees, and  
28 taking unreasonable positions—even though an objective review in every instance shows that their

To the extent a telephonic discovery conference is required, as set forth in Magistrate James' standing order, Oracle USA requests such a conference. As detailed in Exhibits 1 and 2, Counsel for Oracle USA has been unable to obtain any dates and times from Plaintiff's counsel when he would be available for such a conference. Oracle USA's counsel currently can be available any day next week at the Court's convenience at the following number: 415-263-1855. Oracle USA anticipates that the conference would take no more than 15 minutes.

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